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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AxReg

Serial No. 75/828,354

David M. Silverman of Cole Raywid & Braverman, L.L.P., for
AxReg.

Brian A. Rupp, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Chapman, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

On October 21, 1999, AxReg (a Texas general
partnership) filed an application to register on the
Principal Register AXREG.COM for services, as amended,
recited as "guitar registration services via a global
computer network, namely, assignment of guitar
identification numbers to deter theft," in International

Class 42.¹ The Trademark Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the designation AXREG.COM, when used in connection with the recited services of applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Trademark Examining Attorney have fully briefed this case, but applicant did not request an oral hearing before the Board.

We affirm the refusal to register.

It is the position of the Trademark Examining Attorney that the term AXREG.COM is merely descriptive of applicant's services, specifically, guitar registration services over the Internet designed to deter theft. As evidence in support of this position, the Trademark Examining Attorney submitted: (1) printouts from various Internet Web sites, including applicant's own Web site, which show the use of "ax" and/or "axe" as a slang term for certain musical instruments, but especially for electric guitars; (2) dictionary entries showing that "Reg." is an

¹ Application Serial No. 75/828,354, filed on October 21, 1999, is based upon applicant's claim of use in interstate commerce since at least as early as August 24, 1999.

abbreviation for "register" or "registry"; and (3) that the term ".com" is a top-level Internet domain (TLD) name traditionally reserved for commercial enterprises.

Inasmuch as the entire record shows the focus of applicant's identified service to be an Internet registry for guitars, the Trademark Examining Attorney argues that for the relevant members of the public, this designation immediately conveys the nature and purpose of applicant's services.

Applicant, on the other hand, maintains that the entire designation herein is greater than the sum of its parts; that the average consumer would not recognize the term AXREG.COM as a service for registering guitars online; and that the Trademark Examining Attorney has impermissibly dissected this coined term:

The Examining Attorney's brief is a tortured attempt to reach a conclusion of descriptiveness from dissecting applicant's mark into bits consisting of a slang term (AX), an abbreviation (REG) and a generic term (.COM), respectively

(applicant's reply brief, p. 2).

A term is merely descriptive if, as used on or in connection with applicant's goods or services, it immediately conveys information about a significant ingredient, quality, characteristic or feature of

applicant's goods or services, or if it directly conveys information regarding the nature, function, purpose or use of applicant's goods or services. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ2d 215 (CCPA 1978); and In re Eden Foods Inc., 24 USPQ2d 1757 (TTAB 1992). Of course, the issue of mere descriptiveness must not be determined in a vacuum, but rather is analyzed as the term is used, or as it is intended to be used, on or in connection with applicant's goods or services. In re Abcor Development Corp., *supra*.

Applicant may be correct that the term "ax" or "axe" is best known to refer to a cutting tool. Of course, any term alleged to be merely descriptive may have multiple meanings. While the term "ax" (or "axe") has a readily understood connotation in the context of an outdoor tool, on this record, it is also quite clear, that the designation is used as a slang term for a guitar:

Playing regular electric and acoustical guitars as well as exotic "axes" including a 42-string guitar and 15-string harp guitar... "Metheny tests new trio," Chicago Sun Times, March 19, 2000.

PRS Guitars doesn't crank out axes with the regularity of a Fender or Gibson, the acknowledged powerhouses in the field... "Santana, other rock greats, look to Maryland man for quality guitars," The Washington Times, March 16, 2000.

Her tall, slender frame and large wingspan almost give [Hynde] a Tom Petty quality when she is wielding her guitar. When she drops the ax and dances like a go-go girl, however, you could easily see her as a boot-stompin' Nancy Sinatra... "Hynde leads the Pretenders in delivering ageless rock," The Houston Chronicle, February 7, 2000.

Hence, we conclude that the relevant members of the public, purchasers and potential purchasers of applicant's services such as music professionals, music critics, guitar technicians, and guitar players, would recognize and attribute this particular meaning to the term, when used in connection with applicant's services. Under the controlling law on descriptiveness, that is enough:

Appellant advances a variation of this argument, arguing that the board failed to determine descriptiveness of "first tier" by its meaning to "average" or "ordinary" customers, citing In re Colonial Stores, Inc., 394 F.2d 549, 551, 157 USPQ 382, 385 (CCPA 1968) [descriptiveness determined from standpoint of "potential purchaser"]. See also In re Abcor Development Corp., 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978) ["descriptiveness ... is to be determined from the standpoint of the average prospective purchaser"]. Appellant asserts that the "vast majority" of its customers would not be knowledgeable of the meaning of "first tier" in the banking industry.

Appellant misunderstands the import of the above decision. In context, "average" or "ordinary" consumers simply refers to the class or classes of actual or prospective customers of the applicant's particular goods or services. In this sense, corporate users of banking services who, appellant admits, understand the industry meaning of a

"first tier" bank are "average" or "ordinary" customers. That corporate customers may constitute a smaller number of accounts than individuals is irrelevant. Descriptiveness is not determined by its meaning only to the class of regular customers with the largest head count.

In re Omaha National Corp., 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

Similarly, while the designation "Reg." may have multiple meanings when viewed in a vacuum, it is in the context of the recited services that we must make our decision on mere descriptiveness:

"**reg.** abbreviation ... (6) Registry ... ," The American Heritage Dictionary of the English Language, Third Edition, electronic version-1992.

"REG Register," Acronym Finder, OneLook Dictionaries.

In the instant context, the designation "Reg." will immediately be understood as an abbreviation for "register" or "registry."

When these two descriptive terms are combined into "AxReg" and used within the context of "AxReg.com" as seen in the specimens, or AXREG.COM as presented in the typed drawing, the separate meanings of the individual components are not lost. Nor does the combination create any double entendre or incongruity that might render the combination registrable as a mark. Accordingly, we find these two

portions of the mark as combined into "AxReg." to be merely descriptive of these services.

Clearly, the United States Patent and Trademark Office has consistently held that a TLD, like ".com" has no trademark or service mark significance. See United States Patent and Trademark Office, Examination Guide 2-99, Marks Composed in Whole or in Part, of Domain Names (September 29, 1999). This position is being widely adopted by Federal Courts around the country. See Image Online Design, Inc. v. Core Ass'n, 120 F.Supp.2d 870, 877 (C.D. Cal. 2000); and 555-1212.COM, Inc. v. Communication House International, Inc., 157 F.Supp.2d 1084, 49 USPQ2d 1453 (N.D. Cal. 2001). The element ".COM," the top-level domain name, merely indicates that applicant is a commercial entity, and it serves as a critical address element used to access online computer information.

Accordingly, we agree with the Trademark Examining Attorney that applicant's designation, taken in its entirety, merely describes significant purposes, functions or features of applicant's online guitar registration services. There is no question that, by use of applicant's services, one may seek to deter the theft of one's guitar (or "ax") through applicant's registration services ("Reg.") via the Internet. The asserted mark, as a whole,

immediately informs prospective purchasers and/or users of applicant's services that they may take advantage of the benefits of applicant's guitar registration services by accessing the same via the Internet.

Decision: The refusal to register is affirmed.